

BOARD OF OPTOMETRY

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2002 SUNSET REVIEW REPORT

Four Year Overview of the Board's Regulatory Program, Board's Response to Issues and Recommendations from Previous Sunset Review, Background Paper for the 2001 Public Hearing, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs

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1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM

A. BACKGROUND AND DESCRIPTION OF THE BOARD AND PROFESSION

This section reviews the history and authority of the Board, and its present organization, staffing, and operations. It discusses the purpose and composition of the nine-member Board, committees of the Board, and the administrative office staffing and responsibilities. The operational functions and activities of the Board and its administrative office are also discussed.

History and Function of the Board

On March 20, 1903, California became the third state to pass a law recognizing the profession of optometry, and regulating its practice¹. In 1913, a new Optometry Practice Act² was enacted creating the California State Board of Optometry, defining its duties and powers, and prescribing a penalty for a violation of the Act. The Act of 1913 was later incorporated in the Business and Professions Code³. Empowered with rule-making authority⁴, the Board promulgated the first rules for the practice of optometry in 1923. In the same year the legislature passed a law⁵ requiring all applicants for licensure to meet certain educational requirements, i.e., graduate of an accredited school or college of optometry. The Board was charged with the responsibility for accrediting these schools. Prior to this time individuals desiring to practice were not required to have any specific formal education.

Because incompetent or unethical practitioners pose the threat of immediate, extreme, and possibly irreparable harm to the public, no person may engage in the practice of optometry in California unless he or she possesses a valid and unrevoked license from the Board of Optometry. In order to become licensed, applicants must first meet the minimum requirements, as determined by the Board. All requirements are based on a demonstrated need for assuring competency for safe practice, and thereby reducing the public's risk of harm. With approximately 7700 Optometrists and 400 Optometric Corporations, the largest population of optometrists in the United States, the Board is charged with the following duties and responsibilities:

¹ Optometry Act of 1903 (California Statutes of 1903, Chapter CCXXXIV) later repealed by Statutes of 1913, Chapter 598.

² Statutes of 1913, Chapter 598 (derived from the 1903 Act as amended by enactments of 1907 and 1908)

³ Chapter 7, Division 2 (healing Arts), Business and Professions Code (B&P)

⁴ B&P Sections 3025 and 3025.5

⁵ Chapter 164, Statutes of 1923

- Accrediting schools and colleges providing optometric education.
- Establishing educational requirements for admission to the examination for certificates of registration as California licensed optometrists.
- Establishing examination requirements to ensure the competence of individuals licensed to practice optometry in California and administering the examination.
- Setting and enforcing standards for continued competency of existing licensees.
- Establishing educational and examination requirements for licensed optometrists seeking certification to use and prescribe certain pharmaceutical agents.
- Licensing branch offices, registering optometric corporations and issuing fictitious name permits
- Promulgating regulations governing:

Procedures of the Board

Admission of applicants for examination for certificates of registration as optometrist.

Minimum standards of optometric services offered or performed, the equipment, or sanitary conditions, in all offices for the practice of optometry.

- Providing for redress of grievances against licensees by investigating allegations of substance and patient abuse, unprofessional conduct, incompetence, fraudulent action, unlawful activity
- Instituting disciplinary action for violations of laws and regulations governing the practice of optometry when warranted

For nearly a century the Board has presided over the optometric profession serving in a quasi-legislative (rulemaking) and judicial (disciplinary) capacity. As the practice of optometry, once a mercantile business, was redefined as a learned profession providing primary vision care to the public, the Board responded by establishing minimum standards commensurate with the optometric scope of practice. While California has seen a great evolution in the practice of optometry during the past century, the Board's main purpose has remained unchanged, "protecting the health, safety and welfare of California's consumers of vision care."

Regulatory Structure

The Board of Optometry is one of several autonomous regulatory Boards under the Department of Consumer Affairs (DCA), and funding of its operations is derived entirely by the regulated profession (optometry) through licensing fees. The Board functions independently in the regulation of optometry with general support and oversight from the DCA. The present regulatory structure incorporates the efficiencies associated with the centralization of common Board functions where possible, with the independence necessary to enable quick responses to public needs by an independent Board not subject to numerous layers of bureaucratic review and approval.

Board Composition

The Board of Optometry consists of nine members and is vested with the enforcement of the Optometry Practice Act.⁶ Members of the Board, except public members, must be appointed from persons who are registered optometrists of the State of California and actually engaged in the practice of optometry at the time of appointment or who are faculty of a school of optometry. However, in the case of faculty members, no more than two faculty members may be on the Board at any one time and they may not serve as public members. The public members shall not be licentiates of the Board or of any other Healing Arts Board under Division 2.

No person, including the public members, is eligible to serve as a member of the Board who is a stockholder in or owner of or member of the board of trustees of any school of optometry or who has a financial interest, directly or indirectly, in the manufacturing or dealing in optical supplies at wholesale. Board members cannot serve more than two consecutive terms.⁷

Each Board member is appointed to a four year term, and serves until the appointment of his or her successor or until one year has elapsed since the expiration of the member's term, whichever occurs first. The Governor appoints the six members who are practicing optometrists and one public member. The Senate Rules Committee and the Speaker of the Assembly each appoint one public member.⁸ The Governor may remove any member appointed by him for continued neglect of duties, incompetence, or unprofessional or dishonorable conduct.⁹ At this time, there are three vacancies on the Board. All three vacancies are professional members, appointed by the Governor. One position has been vacant as of June 1, 2000, and the other two since June 1, 2001.

The Board employs an Executive Officer to carry out its policies and directives, and manage the day-to-day operations with general Board oversight. The Executive Officer is supported by a staffing complement of 6 permanent full-time positions. All staff is located at the Board's office in Sacramento.

An organization chart is provided in Appendix A-I. To the extent possible, and given the Board's limited number of positions, staff functions have been delineated to reflect enforcement, licensing, examination, and administrative workload activities.

Board Officers

The Board elects from its membership a President, Vice President, and Secretary each of whom serve a term of office of one (1) year or until the election and qualification of a successor¹⁰. Each officer holds the following responsibilities:

A. President

1. Preside at all Board meetings.

⁶B&P Section 3010

⁷B&P Section 3011

⁸B&P Section 3013

⁹B&P Section 106

¹⁰B&P Section 3014

2. Appoint all committee members, standing and ad hoc.
3. Represent the Board at all public meetings or designate a member or the Executive Officer to do so.
4. Maintain a close working relationship with the Executive Officer, providing guidance as needed in the performance of his/her duties.
5. Prepare the final meeting agendas with the assistance of the Executive Officer.
6. Act as the official spokesperson for the Board.
7. Perform an annual review of the Executive Officer's performance with full Board input.
8. Act as the liaison between the Board office and the Board .
9. Perform other duties as requested by the Board.

B. Vice President

1. Assume duties and responsibilities of the President in his/her absence.
2. Perform other duties as requested by the President or the Board.

C. Secretary

1. Ensure that the general minutes of the Board meeting are prepared in a timely manner.
2. Review final minutes for accuracy before being signed by the President, Secretary, and the Executive Officer.
3. Assist the President and Executive Officer with agenda preparation.
4. Perform other duties as requested by the President or the Board.

New Members

Shortly after appointment to the Board, all new members visit the Board office and meet with the Board's executive officer who provides an overview of Board policy and procedures, and guidance regarding the duties and legal responsibilities of members. New members receive Board minutes to review in order to become familiar with current Board issues. Additionally, new members are strongly encouraged to attend the first Department of Consumer Affairs New Board Member Orientation meeting held after his/her appointment.

A Board adopted policy manual (see Appendix A-II) governs the conduct and procedures of the Board and its members. Upon original appointment to the Board each new member is given a copy of the manual which outlines the roles and responsibilities of members, describes the

purpose and duties of Board committees, and states the Board's policy on matters such as conflict of interest, sexual harassment, employment of staff, etc.

Board Meetings

The Board holds four regularly scheduled meetings each year. Typically, these meetings are held in February, May, August and November. The meetings are held in Sacramento, Los Angeles (Orange County), San Francisco or San Diego and are conducted in accordance with the Bagley-Keene Open Meetings Act.¹¹ All meetings are duly noticed as to date, time and location, and a copy of the agenda is mailed to all those appearing on the Board's mailing list, currently comprised of about 100 individuals and organizations. Interested parties are added to the Board's mailing list upon request.

Board meetings are held for the purpose of conducting the public's business and all members of the public are invited to comment on the issues before the Board. In addition to the notice and agenda, any individual or group, can request an agenda packet which contains copies of all public information and documents prepared for each Board meeting. A complete copy of the agenda packet is also available for public inspection at the meeting site.

The Board welcomes and encourages public participation at Board and committee meetings. The President and committee chairs actively solicit comments from members of the audience. A "Public Forum" is scheduled at a time certain at all Board meetings. This is an opportunity for any interested party to address the Board on any topic at a set time. By doing this members of the public who do not wish to attend the entire meeting will not have to wait for long periods of time to speak. Members of the public may also request that specific issues placed on the meeting agenda.

Committees

To assist in the performance of its duties, the Board has established eight standing committees, all of which function as working committees, assigned specific issues requiring special attention. Board committees meet, as needed, on a periodic basis throughout the year. The committees and their duties are as follows:

Executive Committee

The committee consists of the President and Immediate Past President and is responsible for addressing matters of Board policy and/or urgent issues arising between Board meetings; overseeing the administration of the Board's budget, ensuring that overall expenditures are consistent with Board policy and are in conformance with state guidelines and legal requirements; and promoting the Board's strategic plan.

Enforcement

The committee is responsible for monitoring the Board's enforcement activities, and recommending changes to policy, regulations or laws to enhance the Board's enforcement abilities.

¹¹Government Code Section 11120

Licensing and Examination

The committee has the primary responsibility for overseeing the Board's examination and licensing process. The committee recruits and selects item writers and subject matter experts, reviews examination materials and procedures on an ongoing basis, recommending revisions, as necessary.

Continuing Education

The committee monitors the Board's Continuing Education program and the enforcement thereof, reviews and approves provider applications and continuing education courses, and proposes changes in policy or regulation for Board consideration and action.

Credentials

The committee provides guidance on matters related to professional credentials of both U.S. and foreign-trained optometrists.

Legislation

The committee is responsible for the initial study on Board proposed legislation; monitoring bills affecting the regulation of optometrists or the visual welfare of the consumer; and recommending positions on pending legislation for the Board consideration.

Regulation

With the assistance of the Executive Officer and/or staff the committee is responsible for reviewing the Board regulations on an ongoing basis and recommends changes for Board consideration and action. The committee monitors the regulation change process until approval by the Office of Administrative Law.

Public Relations

The committee's primary responsibility is providing information regarding consumer rights and the Board's role as a consumer protection agency and to establish and maintain relationships with the Board's various interest groups.

The Regulated Profession

Optometry is a licensed occupation, regulated by all fifty states and the District of Columbia. Doctors of optometry are independent primary health care providers who examine, diagnose, treat and manage diseases and disorders of the visual system, the eye and associated structures. Optometrists are highly educated and trained to diagnose disease and pathological conditions manifesting in the human eye, such as glaucoma and diabetic retinopathy.

Significant Changes

Legislative

As originally defined Optometry was a drugless profession¹². However, legislation passed in 1976 significantly expanded the scope of practice for optometrists, allowing qualified optometrists the use of diagnostic pharmaceutical agents (DPAs).¹³ The Board, with the advise

¹² See Section 2, Optometry Act of 1913, Chapter 598, Statutes of 1913

¹³ B&P Section 3041 (amended by Stats. 1976, Ch. 418.)

and consent of the Division of Allied Health of the Board of Medical Quality Assurance (Medical Board of California), was charged with establishing the educational and examination requirements for DPA certification, and promulgating the DPA drug formulary.¹⁴ Today, nearly all California licensees are DPA certified.

Senate Bill 668 (Chapter 13, 1996 Statutes) amended, for the second time, the scope of practice for optometrists. Under the new scope of practice¹⁵, optometrists meeting strict educational and clinical training requirements are eligible for certification authorizing them to diagnose and treat certain diseases of the human eye or eyes, or any of its appendages. The Board was charged with implementing the new law's provisions for the issuance of therapeutic pharmaceutical agent (TPA) certification. To date, the Board has certified over 5,250 optometrists.

Last year Senate Bill 929 (Chapter 676, 2000 Statutes) again amended the scope of practice for optometrists. The new scope of practice¹⁶ now includes the prevention, treatment, management, and rehabilitation of certain disorders and dysfunctions of the visual system and expanded the list of pharmaceutical agents that may be used and prescribed by optometrists. The new law specifies additional circumstances requiring collaboration between an optometrist and ophthalmologist, and adds to the educational and training requirements for the treatment of certain diseases and dysfunctions.

In addition to the expanded scope of optometric practice, SB 929 set forth additional duties that an assistant may perform under the direct responsibility and supervision of an optometrist¹⁷. Assistants in the office of an optometrist and acting under the direct responsibility of the optometrist may now perform tasks including history-taking, visual acuities, preliminary testing and clinical data-collecting duties.

"To meet the public's increasing need for accessible, affordable, quality health care, providers of health care must maximize the utilization of every health care worker and ensure appropriate delegation of responsibilities and tasks."¹⁸ Delegation of duties by health care professionals has long been regarded as necessary for the purposes of efficiency and best utilization of skills. Currently there are 43 jurisdictions in which state statutes or optometry Board regulations permit the delegation of specific tasks and procedures to optometric assistants.

The Board will consider regulation proposals designed to provide adequate public protection by ensuring that the assignment of duties to an assistant are done in a safe and legal manner. Specifically, the proposals will include standards for ensuring that assistants possess the necessary knowledge and skills for performing the delegated tasks and procedures, and that appropriate supervision exists.

Strategic Planning

In 1989, the Board participated in a long-range planning and self-assessment workshop, at which time it developed a plan setting the direction for its program policy decisions. Since that time the Board has held three additional strategic planning sessions. The Board's current long-range plan focuses on proactive measures for consumer protection and serves as the guide

¹⁴ B&P Section 3041.2 (added by Stats. 1976, Ch. 418)

¹⁵ B&P Section 3041.3

¹⁶ B&P Section 3041

¹⁷ B&P Section 2544

¹⁸ 1995 Position Paper of the National Council of State Board of Nursing

upon which Board policy decisions are made and the daily operations of the Board office are carried out.

Major Studies

Other than the recent occupational analysis (referenced later in this report), the Board has conducted no major studies during this period of review.

Licensing Data

It is the Board's policy to provide full disclosure of all information to the greatest extent allowed under the law. Those inquiring about an individual licensee can obtain the issue and expiration of the license, the school of graduation and the year graduated, scope certification, i.e. diagnostic, therapeutic, lacrimal and/or glaucoma certification, practice location(s), associated permits or registrations, e.g. fictitious name permit, branch office license, etc., and any complaint history or disciplinary action. The Board does not currently certify or recognize any certification of specialty practice in optometry.

Optometric licenses are renewed on the last day of the certificate holder's birth month every two years¹⁹ and may be renewed in an active or inactive status²⁰. There are approximately 7,744 licensed optometrists of the Board of Optometry for FY 2000/01. The following provides licensing data for the past four years:

LICENSING DATA FOR [PROFESSION]	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Licensed	Total: 7432	Total: 539	Total: 7653	Total: 7744
California	4623	4716	4816	4829
Out-of-State	1192	1154	1105	1131
Inactive	1617	1669	1732	1784
Applications Received	Total: 331	Total: 355	Total: 300	Total: 316
Applications Denied	Total: 0	Total: 0	Total: 0	Total: 0
Licenses Issued	Total: 195	Total: 233	Total: 245	Total: 257
Renewals Issued	Total: 3908	Total: 2773	Total: 2938	Total: 2842
Statement of Issues Filed	Total: 0	Total: 1	Total: 1	Total: 0
Statement of Issues Withdrawn	Total: 0	Total: 1	Total: 0	Total: 0
Licenses Denied	Total: 0	Total: 0	Total: 1	Total: 0

OTHER PERMIT/CERTIFICATE CATEGORIES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Permit/Certificate (By Type)	Total: 4,506	Total: 5,157	Total: 6,014	Total: 6,899
Branch Office	377	377	379	380

¹⁹ B&P 3146

²⁰ B&P 700, 701, 702, 703 & 704

Statement of Licensure	573	683	804	789
Optometric Corporation	398	408	418	434
Fictitious Name	764	787	705	816
Therapeutic Optometrist	2,394	2,902	3,708	4,480
Permit/Certificate Issued (By Type)	Total: 1,002	Total: 1,257	Total: 1,175	Total: 799
Branch Office	81	64	49	72
Statement of Licensure	267	266	248	296
Optometric Corporation	18	30	27	36
Fictitious Name	128	91	79	80
Therapeutic Optometrist	508	806	772	315
Renewals Issued (By Type)	Total: 1,455	Total: 1,461	Total: 1,496	Total: 1,509
Branch Office	354	343	355	349
Statement of Licensure*	n/a	n/a	n/a	n/a
Optometric Corporation	384	387	389	396
Fictitious Name	717	731	752	764
Therapeutic Optometrist**	n/a	n/a	n/a	n/a
* Permit does not require renewal				
** Board does not track renewal by status type				

B. BUDGET

Revenue and Expenditures

The Board of Optometry is a special fund agency and is supported entirely by application, licensing, and permit fees. The Board's main source of revenue is derived from renewal fees. The fee for license renewal is \$300.00 and is due on a biennial basis. Sixteen dollars (\$16.00) of each renewal fee is paid to the University of California²¹. These funds are to be used solely for the advancement of optometric research and the maintenance and support of the department in which the science of optometry is taught.

The maximum amount of fees charged by the Board is controlled by statute²². In 1992 the Board successfully sought legislation to increase the statutory limits. Prior to the 1992 amendment the Board's fees had not been increased in more than fifteen years. The Board's projected revenue and expenditures for the next four fiscal years will be from license and permit applications, renewals, and delinquent fees at their current levels. Revenue and expenditures for the past four fiscal years is provided in the tables below. The current schedule of fees is also shown.

Fee Schedule	Current Fee	Statutory Limit
Applications:		
Initial Examination	\$275.00	\$275.00
Re-Exam	175.00	175.00
Certificate of Registration	25.00	25.00
Branch Office License	60.00	60.00
Fictitious Name Permit	10.00	10.00
Optometric Corporation	100.00	100.00
Statement of Licensure	20.00	20.00

²¹ B&P 3148

²² B&P Section 3152

Renewals:		
Certificate of Registration (Biennial)	300.00	300.00
Delinquency Fee	25.00	25.00
Branch Office License	60.00	60.00
Delinquency Fee	25.00	25.00
Fictitious Name Permit	10.00	10.00
Delinquency Fee	5.00	5.00
Optometric Corporation	50.00	50.00

REVENUES	ACTUAL				PROJECTED	
	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Licensing Fees	1,308,181	968,432	1,005,695	965,683	990,070	962,200
Fines & Penalties	**	**	8,008	3,753	5,000	5,000
Other	23,673	9,643	8,310	3,119	2,500	2,500
Interest	53,743	58,028	66,510	80,872	51,937	49,138
TOTALS	1,385,597	1,036,103	1,088,523	1,053,427	1,049,507	1,018,838

** The Board did not have cite and fine authority during these fiscal years

EXPENDITURES	ACTUAL				PROJECTED	
	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Personnel Services	426,835	402,704	393,942	391,208	426,062	419,867
Operating Expenses	470,501	717,599	817,966	729,010	677,938	683,138
(-) Reimbursements	- 28,883	- 39,527	- 48,083	- 48,216	- 48,000	- 48,000
(-) Distributed Costs	- 94,731	- 111,769	- 120,647	- 116,522	- 107,218	- 101,907
TOTALS	773,722	969,007	1,043,178	955,480	990,782	953,098

Expenditures by Program Component

EXPENDITURES BY PROGRAM COMPONENT	FY 97-98	FY 98-99	FY 99-00	FY 00-01	Average % Spent by Program
Enforcement	358,542	623,468	716,848	624,366	56%
Examination	127,424	118,814	125,902	110,421	10%
Licensing	257,200	205,342	215,289	210,022	19%
Administrative	154,170	172,679	153,869	163,328	15%
Diversion (if applicable)	n/a	n/a	N/a	n/a	n/a
TOTALS	897,336	1,120,303	1,211,908	1,108,037	

Fund Condition

The Board's fund at the end of the past fiscal year (00/01) reflects a reserve of 11.6 months. A four-year projection indicates a reserve of 5.9 months bringing the Board under the statutory limit²³ of six months. It should be noted that for budget year 99/00 the DCA fund analysis had reflected a reserve level of 6.5 months for the 00/01 fiscal year. It is unclear, given the expenditure and revenue patterns, why the reserve is at its present level. The Board will do an additional analysis, given the expenditure and revenue patterns, to determine whether a decrease in renewal fees is warranted.

ANALYSIS OF FUND CONDITION	FY 99-00	FY 00-01	FY 01-02 (Budget Yr)	FY 02-03 (Projected)	FY 03-04 (Projected)	FY 04-05 (Projected)
Total Reserves, July 1	1,144,823	1,069,385	1,038,745	982,752	874,130	737,677
Total Rev. & Transfers	1,088,522	1,049,674	1,042,007	1,011,338	1,005,906	999,084
Total Resources	2,233,345	2,110,877	2,080,752	1,994,090	1,880,036	1,736,761
Total Expenditures	1,163,960	1,072,132	1,098,000	1,119,960	1,142,359	1,165,206
Reserve, June 30	1,069,385	1,038,745	982,752	874,130	737,677	571,555
MONTHS IN RESERVE	11.1	11.6	10.7	9.4	7.7	5.9

C. LICENSURE REQUIREMENTS

Education, Experience and Examination Requirements

The Board was first established over ninety years ago and does not have any practicing licensees who were not subject to entry level competency testing requirements at the time of initial licensure. Individuals seeking licensure from the Board must first meet the following requirements:

- Possess a high school diploma or equivalent²⁴.
- Granted an Optometric Doctorate degree from an accredited school, college, or university or its division or department²⁵. The Board's accreditation of optometry schools is delegated to the Council on Optometric Education which sets the standards for all domestic and a limited number of foreign schools and is not unreasonably restrictive or anti-competitive.
- Pass the National Board of Examiners in Optometry's Parts I and II examinations as well as the Clinical Skills portion of the Part III examination
- Pass the California Patient Management and Laws and Regulations examinations. The statute allows for a limited waiver of examination requirements for instructors employed by either of the California schools of optometry. Individuals must have taught in a California school of optometry for five years, hold a valid optometric license in another state, pass the

²³ B & P Section 3145

²⁴ B&P 3050

²⁵ B&P 3047

Board's law examination, and meet any other criteria as determined by the Board.²⁶ This is the only instance where qualifying experience applies to obtaining a license in California. Except as noted for faculty at the California schools, the educational and examination requirements for an applicant who is already licensed as an optometrist in another state or country are the same as those for new optometry graduates. Applicants licensed in another state or country must:

- Be a high school graduate.
- Have an optometric doctorate (OD) degree.
- Pass the National Board of Examiners in Optometry's Parts I and II examinations as well as the Clinical Skills portion of the Part III examination.
- Pass the California Patient Management and Laws and Regulations examinations.

A candidate seeking licensure must submit an application to take the licensing examination and provide the following information²⁷:

- Name, address, telephone number, birth date, and Social Security ID.
- Optometry school(s) attended and date of graduation.
- National Board of Examiners in Optometry (NBEO) transcript information.
- Information concerning previous examination applications to the Board .
- Other state licensure information.
- Other state licensure denials, suspensions, and/or revocations.
- Medical information indicating an ailment that is communicable to others.
- Information indicating whether, as a juvenile or adult, the applicant has been convicted of or plead nolo contendere to any crimes other than Vehicle Code offenses in which the fines levied were less than \$50.00.
- Examination site preferences.
- Declaration of truth of information provided by applicant.

Verification of Information

Information provided on examination applications is supported by confirming documentation from other governmental agencies and educational and testing entities. When applications are reviewed, official school and test transcripts (received directly from optometry schools and the NBEO) are examined for degree(s) awarded and passing scores, respectively. After initial review, examination staff, without the aid of an automated tracking system, tracks applicants.

Past criminal activity is verified by Department of Justice (DOJ) fingerprint checks. If a criminal conviction is indicated by the DOJ the application is referred to enforcement staff for investigation and determination as to whether the conviction is substantially related to the practice of optometry as required by statute²⁸.

Verification of licensure in other states and prior practice history, including malpractice actions, is done through the use of the Association of Regulatory Board of Optometry (ARBO) Practitioner Disciplinary Data Bank. Cases involving disciplinary action in another state is verified directly with the appropriate state licensing agency.

²⁶ B&P 3042.5 (b) & 3056 (a)

²⁷ B&P 3044 and 3045, CCR 1530.1

²⁸ B&P 480

Examination Passage Rates

National Board of Examiners in Optometry				
YEARS	NATION-WIDE		CALIFORNIA ONLY	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
1997/98				
Part I	2,008	73%	Not Available	
Part II	1,502	84%		
Part III	1,373	93%		
1998/99				
Part I	1,992	65%	Not Available	
Part II	1,590	86%		
Part III	1,437	94%		
1999/00				
Part I	1,996	69%	Not Available	
Part II	1,528	86%		
Part III	1,448	92%		
2000/01				
Part I	1,955	72%	Not Available	
Part II	1,554	91%		
Part III	1,437	90%		
*NOTES				

California Patient Management				
	1997/98	1998/99	1999/00	2000/01
CANDIDATES	312	548	318	302
PASS %	77%	71%	88%	84%
NOTE:				

California Law and Regulations				
	1997/98	1998/99	1999/00	2000/01
CANDIDATES	243	479	267	267
PASS %	95%	93%	91%	92%
NOTE:				

Examination Validity/Occupational Relevance

As the strictest form of regulation, state licensure is rightly viewed by the public as a confirmation by the state that the license holder possesses a special or higher degree of proficiency in his/her profession. Because the impact of optometric services on public health and safety is direct, immediate, and sometimes irreparable, it is critical that only fully-qualified candidates are allowed to practice in California. The Board's licensure examination requirements are designed to ascertain whether applicants possess the minimum competencies for safe practice. A valid and reliable examination must have content validity that is representative of and relevant to the domain tested. To ensure the content validity of the optometry licensure exam, the Board conducted an occupational analysis, which was completed in 1992. The results of this analysis provided the foundation upon which an examination blueprint was developed. The blueprint specifications guided the setting of testing requirements applicants must fulfill, and the construction of the Board administered examination. The dynamic and technical nature of the health care profession emphasizes the importance of a comprehensive and up-to-date analysis of the occupation. For these reasons, the Board adopted a plan calling for the assessment of the practice of optometry every five years. In keeping with this plan, in October 1997 the Board contracted with the DCA, Office of Examination Resources for the performance of an up-to-date analysis. OER submitted its final report April 2001 and this report is to be used as the basis for future exam development.

Examination Processing Times

The Board offers its licensing examination two times a year; typically the second Monday in January and last Monday in June. The January examination consists mainly of those applicants failing the previous June examination. Applications for the June licensing examination are submitted in May and early June each year. The average time between submission of a candidate's application and the administration of the examination has been a consistent 45 days. The regularity of the average time from application submission to exam administration is attributed to the fact that most applicants graduate from optometry school, and are therefore qualified, approximately 45 days prior to the exam administration. Examination results are mailed, on average, 28.5 days after the exam administration. With scoring assistance from the OER, the Board has been able to mail results no later than 32 days following the exam.

AVERAGE DAYS TO RECEIVE LICENSE	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Application to Examination	45	45	45	40
Examination to Issuance	24	30	28	32
Total Average Days	69	75	73	62

License Denials

The Board may deny an application for licensure under Business and Professions Code Sections 480 and 3044. Decisions for denying a license are made on a case-by-case basis and include consideration of factors such as: Whether the act took place in an optometric

setting; was there personal or financial injury to another, and if so, the severity and; whether the applicant's ability to practice safely is affected by the action. Determinations concerning false statements provided on applications may also take into consideration willful intent on the part of the applicant to mislead the Board or conceal facts or information.

Under CCR Section 1516 - in determining rehabilitation - the Board may consider the nature and severity of the act(s), the applicant's total criminal record, the amount of time elapsed since the commission of the act(s), whether the applicant has complied with the terms of the previous discipline and other evidence of rehabilitation.

Continuing Education/Competency Requirements

In order to renew a license in active status licensees must meet statutorily mandated continuing education requirements²⁹. Currently, an optometrist renewing an active license must complete 40 hours of course work every two years or 50 hours if the doctor is certified to use therapeutic pharmaceutical agents (TPA). Additionally, TPA certified optometrists must fulfill 35 of the required 50 hours on the diagnosis, treatment and management of ocular disease as follows: 12 hours on glaucoma; 10 hours on ocular infections; five hours on inflammation and topical steroids; six hours on systemic medications and two hours on the use of pain medications. The Board monitors compliance with the CE requirements by conducting a random audit of 10% of license renewals each month. The Board's average compliance rate is 94.5%. If an optometrist fails to comply with this requirement, his/her license will be renewed but placed in an "inactive" status until the required hours of CE are obtained. Continuing education as a remediation tool in cases involving licensee found to be negligent or lacking in professional competence. The licensee is directed by the terms of the Board's decision or stipulated settlement as to the education to be obtained. The conditions under which such remedial education would be required are outlined in Board's disciplinary guidelines. The Board has formed partnerships with the two California schools of optometry to develop and provide remedial education courses in areas related to professional skills, ethics, clinico-legal issues, etc. An optometrist cannot practice optometry in California while holding an inactive license. The Board also uses

Comity/Reciprocity With Other States

Currently, there is no reciprocity with other states. An applicant for licensure in California who also holds a license in another state or country must meet all of the same requirements as previously described. Information provided by these applicants is verified in the same manner described. The Board is mindful of its responsibility to ensure that practice restrictions are not overly burdensome and continues to look for opportunities to increase access to licensure. In keeping with this goal the Board recently adopted a regulation - now pending approval - which would accept all parts of the NBEO examination in lieu of the Board administered exam, a practice currently observed by 37 states. This move was facilitated by recently enacted legislation (SB 929) which brings California's scope of optometric practice to a level more consistent with other states and to that currently tested by the NBEO. Since nearly 100% of new graduates take all parts of the NBEO exam, applicants who have passed this exam could become licensed in California and the other 37 states by passing only a state-specific jurisprudence exam.

²⁹ B&P 3059

D. ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Inquiries (Complaint Info Only)	Total: 215	Total: 242	Total: 250	Total: 355
Complaints Received (Source)	Total: 308	Total: 273	Total: 245	Total: 257
Public	134	126	125	110
Licensee/Professional	50	81	38	26
Groups	11	18	11	3
Governmental Agencies	113	48	71	118
Other				
Complaints Filed (By Type)	Total: 308	Total: 282	Total: 303	Total: 257
Competence/Negligence	30	18	21	26
Unprofessional Conduct	120	115	117	110
Fraud	28	21	13	16
Health & Safety	65	51	86	27
Unlicensed Activity	78	73	63	73
Personal Conduct	3	4	3	5
Complaints Closed	Total: 275	Total: 258	Total: 208	Total: 169
Investigations Commenced	Total: 44	Total: 40	Total: 37	Total: 66
Compliance Actions	Total: 100	Total: 112	Total: 94	Total: 111
ISOs & TROs Issued	0	0	0	0
Citations and Fines	0	0	6	4
Public Letter of Reprimand	3	0	19	0
Cease & Desist/Warning	96	112	69	107
Referred for Diversion	0	0	0	0
Compel Examination	0	1	1	0
Referred for Criminal Action	Total: 4	Total: 2	Total: 6	Total: 6
Referred to AG's Office	Total: 14	Total: 16	Total: 27	Total: 18
Accusations Filed	2	12	3	3
Accusations Withdrawn	1	0	0	0
Accusations Dismissed	0	0	0	3
Stipulated Settlements	Total: 6	Total: 5	Total: 4	Total: 4
Disciplinary Actions	Total: 20	Total: 7	Total: 14	Total: 12
Revocation	8	1	7	7
Voluntary Surrender	1	2	0	0
Suspension Only	0	0	0	0
Probation with Suspension	2	2	1	0
Probation	9	1	6	5
Probationary License Issued	0	1	0	0
Public Reproval	0	0	0	1
Probation Violations	Total: 1	Total: 1	Total: 2	Total: 1
Suspension or Probation	1	0	0	0
Revocation or Surrender	0	1	2	1

Petitions for Reinstatement	Total: 4	Total: 0	Total: 2	Total: 1
*NOTES				

Enforcement Program Overview

The California Board of Optometry is mandated to protect the public's health, safety, and welfare by ensuring that individuals are competent to practice optometry and that the laws governing the practice of optometry are enforced in a fair and judicious manner. The Board has the power, duty, and authority to investigate violations of the provisions of the Business and Professions Code, Chapter 7, Division 2, Section 3000 seq. The Board is also given specific authority to receive and investigate complaints and to discipline violators accordingly. In the administration of consumer protection board staff is guided in their daily complaint response and enforcement functions by the Board's *Complaint and Enforcement Process* guide(Appendix D-I) together with the *Disciplinary Guidelines and Model Disciplinary Orders* (Appendix D-II). Anyone may file a complaint against a licensed optometrist with the Board of Optometry. The Board also investigates complaints against any individual suspected of practicing optometry without a license. Complaints are generally filed by patients, subsequent treating optometrists, employees, attorneys, insurance companies, or local law enforcement agencies.

The Board receives an average of 265 complaints a year with the largest percentage (46%) of complaints filed by consumers. Of the total number of complaints received annually, unprofessional conduct is the most often alleged violation. Unprofessional conduct includes allegations such as patient abandonment, breach of confidentiality, failure to release records, unethical practices, theft, and failure to report abuse.

The following are some of the unique reporting requirements pursuant to Article 11, Professional Reporting, Business and Professions Code Section 800:

801 Within 30 days, every insurer providing professional liability insurance to a licensee must report to the Board, any settlement or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services.

801.1 Within 30 days, every state or local agency that self insures a licensee must report to the Board, any settlement or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services.

802 Within 30 days, a licensee who does not possess professional liability insurance must report to the Board, every settlement or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services.

803. Within 10 days after a judgement by a court of this state that a licensee has committed a crime, or is liable for any death or personal injury resulting in a judgement in excess of \$30,000 caused by that licensee's negligence, error or omission in practice, or the unauthorized rendering of professional services, the clerk of the court rendering the judgement, must report that fact to the Board.

There are problems with the Board's receiving relevant complaint information or obtaining information for investigative purposes in that it often takes years for the parties to come to an

agreement, and some agreements include a confidentiality clause, prohibiting the victim from discussing any of the details of the settlement. When the Board receives reports of settlement or arbitration awards, copies of depositions of all parties and all relevant clinical records are obtained via the Division of Investigation. The Board then recruits an impartial expert consultant to review these documents and provide an opinion as to whether there was a departure from the standard of care. When many years have passed before an agreement is reached, it can be both difficult and extremely time consuming to obtain all of the documents necessary for the expert consultant's review and opinion. When a settlement includes a confidentiality agreement, the Board is sometimes unable to obtain the necessary complaint information for investigative and disciplinary purposes.

All types of cases are considered for settlements whenever appropriate. Board staff is always open to settlement discussions. Stipulated settlements are most often less time consuming and less costly than an administrative hearing. Stipulated settlements can accomplish the Board's goal of consumer protection in a more expeditious and economical manner. Referring to the Board's Disciplinary Guidelines and Model Disciplinary Orders, Enforcement Manager and Executive Officer work with the assigned Deputy Attorney General in all administrative cases.

Since the last Sunset Review in October 1997 there has been an increase in the number of investigations initiated. The average of investigations per year has increased from 27 to 47. The average number of cases being referred to the Attorney General's Office has increased from 11 to 19.

Of the 1,083 complaints received over the past four years, an average of 83 percent were closed, 17 percent were referred for investigation, 3 percent had accusations filed, and 3 percent resulted in disciplinary action. Since the last Sunset Review, the average number of disciplinary actions has increased by approximately 2 ½ percent (average of 3 actions per year).

NUMBER AND PERCENTAGE OF COMPLAINTS DISMISSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
COMPLAINTS RECEIVED	308	273	245	240
Complaints Closed	275	258	208	169
Referred for Investigation	44	40	37	66
Accusation Filed	2	12	3	3
Disciplinary Action	12	6	9	7

Case Aging Data

Time frames on the average percentage of cases and days involved from opening to completion of an investigation have increased since the last review: 10 percent of our investigations were closed in 90 days; 31 percent were closed in 180 days; 43 percent were closed in one year; 14 percent were closed in two years; 2 percent were closed in three years; and no cases took more than three years to complete.

Of the cases referred to the Attorney General's Office 46 percent were closed in one year; 35 percent were closed in two years; 12 percent were closed in three years; 4 percent were closed in four years; and, no cases took more than four years to complete. Since the last review there has been a decrease in the number of days it takes to close cases referred to the Attorney General's office.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaint Processing	62	36	63	60
Investigations	236	249	238	146
Pre-Accusation*	206	240	298	265
Post-Accusation**	301	314	303	443
TOTAL AVERAGE DAYS***	805	839	902	914

*From completed investigation to formal charges being filed.

**From formal charges filed to conclusion of disciplinary case.

***From date complaint received to date of final disposition of disciplinary case.

INVESTIGATIONS CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
90 Days	3	3	4	6	10%
180 Days	10	12	10	16	31%
1 Year	7	20	23	18	43%
2 Years	6	3	3	10	14%
3 Years	0	0	0	3	2%
Over 3 Years	0	0	0	0	0%
Total Cases Closed	26	38	40	53	
AG CASES CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
1 Year	7	6	6	1	46%
2 Years	4	1	6	4	35%
3 Years	4	0	1	0	12%
4 Years	0	0	1	2	7%
Over 4 Years	0	0	0	0	0%
Total Cases Closed	15	7	14	7	
Disciplinary Cases Pending	14	11	12	12	

Cite and Fine Program

The Board promulgated regulations to issue citations and fines in 1999 under the authority of B & P § 125.9. The amount of administrative fines which range from \$50 to \$2,500 per violation, are directed by prior violations, severity of offense and other mitigating evidence. The citation program provides the Board with an expedient method of addressing violations more technical in nature that don't result in physical or financial harm to the patient.

CITATIONS AND FINES	FY 1997/98*	FY 1998/99*	FY 1999/00	FY 2000/01
Total Citations	n/a	n/a	6	4
Total Citations With Fines	n/a	n/a	6	4
Amount Assessed	n/a	n/a	21,771	7,057
Reduced, Withdrawn, Dismissed	n/a	n/a	2	3
Amount Collected			13,616	2,152

**cite and fine authority effective 9/16/99*

Diversion Program

The Board currently does not have a diversion program. Until recently optometrists had limited access to controlled substances. However, with the recent scope expansion, optometrists now may obtain and prescribe certain Schedule III Narcotic drugs. The Board will be exploring the need and feasibility of developing a diversion program.

Results of Complainant Satisfaction Survey

CONSUMER SATISFACTION SURVEY RESULTS*				
QUESTIONS	Percent Satisfied by Calendar Year			
# Surveys Mailed: 268 # Surveys Returned: 114	1997	1998	1999	2000
1. Were you satisfied with knowing where to file a complaint and whom to contact?	82%	66%	100%	100%
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?	72%	100%	100%	87%
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?	63%	100%	80%	50%
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?	63%	66%	80%	66%
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	61%	66%	66%	61%

6. Were you satisfied with the final outcome of your case?	46%	82%	60%	75%
7. Were you satisfied with the overall service provided by the Board?	60%	72%	80%	66%

*All Boards and committees under review this year shall conduct a consumer satisfaction survey to determine the public's views on certain case handling parameters. (The Department of Consumer Affairs currently performs a similar review for all of its bureaus.)

A list of seven questions have been provided. Each Board or committee shall take a random sampling of closed complaints and disciplinary actions for a four year period. Consumers who filed complaints should be asked to review the questions and respond to a 5-point grading scale (i.e., 5, 4, 3 =satisfied to 1, 2 =dissatisfied). The Board or committee shall provide the percent of satisfaction for each of the past four years.

D. ENFORCEMENT EXPENDITURES

AND COST RECOVERY

AVERAGE COST PER CASE INVESTIGATED	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Investigation & Experts	68,702	151,989	199,569	267,116
Number of Cases Closed	26	38	40	53
Average Cost Per Case	2,642	3,999	4,989	5,039
AVERAGE COST PER CASE REFERRED TO AG	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Prosecution & Hearings	67,837	237,165	267,363	107,689
Number of Cases Referred	14	16	27	18
Average Cost Per Case	7,487	18,821	9,902	5,982
AVERAGE COST PER DISCIPLINARY CASE	7,487	18,821	14,891	11,021

Cost Recovery Efforts

The Board seeks cost recovery in most cases. Cost recovery is always negotiated in stipulated settlements. In cases where the respondent is placed on probation cost recovery generally proceeds in compliance with established payment schedules. However, those cases calling for the revocation or a significant suspension period, costs are often difficult to collect. In these cases respondents have fewer financial resources due to the suspension of practice, or in the case of revocation, have no incentive to pay.

Since the last review there has been an increase in cost recovery ordered. This is attributed to more standardized procedures relating to the assessment and identification of costs.

COST RECOVERY DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Enforcement Expenditures	136,539	389,154	466,932	374,805
# Potential Cases for Recovery*	12	6	9	7
# Cases Recovery Ordered	10	3	8	7
Amount of Cost Recovery Ordered	63,889	37,535	85,032	46,291
Amount Collected	28,883	20,454	19,334	32,350

*The "Potential Cases for Recovery" are those cases in which disciplinary action has been filed based on a violation, or violations, of the License Practice Act.

Note: Amounts collected are less than amounts ordered as they reflect monies collected pursuant to payment schedules.

F. RESTITUTION PROVIDED TO CONSUMERS

RESTITUTION DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Amount Ordered *				
Amount Collected	3,299.50	3,038.29	5,361.75	2,225.73

* Although, the Board cannot order restitution outside of a stipulated agreement or an Administrative Law Judge's proposed decision, through the informal complaint process it is often recommended to a licensee that consumers monies be refunded in order to satisfactorily resolve a complaint. In addition, many licensees often offer refunds of monies in order to resolve complaints filed against them.

G. COMPLAINT DISCLOSURE POLICY

It is the belief of the Board of Optometry that consumer protection is best achieved when consumers are provided with the information necessary to make educated and informed decisions regarding their vision care needs. Therefore, it is the policy of the Board that information concerning the conduct of optometrists licensed in the State of California be provided to the general public upon request.

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed (disclosed after closed)	X	
Citation	X	
Fine	X	
Letter of Reprimand	X	
Pending Investigation		X
Investigation Completed		X
Arbitration Decision	N/A	
Referred to AG: Pre-Accusation		X
Referred to AG: Post-Accusation	X	
Settlement Decision	X	
Disciplinary Action Taken	X	
Civil Judgment*	X	
Malpractice Decision	X	

Criminal Violation*: Felony Misdemeanor	X	
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The following guidelines are used in determining information that may be disclosed:

Complaint Information - Information concerning complaints filed against a licensee of the Board may be disclosed in accordance with the following criteria:

1. The individual complaint has been closed (including those later included in a formal investigation)
2. The complaint was closed within a three year period immediately preceding the request for information
3. In the opinion of the Board's enforcement staff the complaint investigation revealed sufficient information to indicate a probable violation of the law

Under no circumstances shall the Board staff disclose to the general public any complaint found to be invalid, did not contain sufficient information to substantiate the probability of a violation or has not yet been closed and a disposition rendered.

Formal Investigations - Information concerning any ongoing formal investigation of a licensee shall not be disclosed to the general public, except to the extent that the investigative case contains individual closed complaints which may be disclosed under the above-cited criteria.

Disciplinary Action - All formal disciplinary actions involving a licensee shall be released upon request, citing the specific offense(s) and action taken. In addition these actions shall be published in the Board newsletters.

H. CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

The Board has utilized different approaches to achieve consumer education and to ready information that facilitates the Board's consumer protection mandate. The Board has recently participated in several consumer outreach activities. At these functions staff is available to answer questions, provide complaint forms and pamphlets pertaining to the optometric profession and their consumer rights. Written information is also available which discusses issues relative to ocular health care and related pathologies.

Online Information

Aside from the community outreach functions, the Board's primary education and outreach vehicle is our website. The website provides a variety of vital information for consumer including:

- License verification that enables all parties to access licensee current and past license and enforcement data. The data can be simply accessed by providing any part of a doctor's actual or fictitious name. Consumers can make informed decisions regarding the selection of an optometrist relative to whether the doctor is certified to treat ocular disease or has a disciplinary history. Consumers also can check on the status of their existing doctor's license.
- Information is available on the website's "Frequently Asked Questions" page. If a consumer has additional concerns they may contact the Board via the central email address. Email box messages are distributed to appropriate staff daily with responses

generally provided on the same day they are received. Consumers may also find information about and when public meetings are scheduled.

- Downloading of all applications such as practitioner business licenses and permits as well as consumer complaint forms and can be accomplished. At this time it is not feasible for the Board to conduct online business transactions through the website inasmuch as additional information such as lease agreements, articles of incorporation, and payments can not be submitted via the Internet for renewing or obtaining a license or permit.
- Licensure candidates may obtain licensing information and be informed of any new or pending changes in the process that may effect the issuance of a license to practice optometry in California. At this time the Board does not provide the License Examination application on the web. Presently, two examinations are offer annually with the second administration providing two testing sites for candidate convenience. The applications for each administration differ in that one provides a choice of sites. It has been the Board's experience that candidates frequently submit the wrong application for testing. This often impacts candidate's ability to sit for an examination due to the inability to present at a specific site.

Online Business

Other than the downloading of forms and applications mentioned above, for various reasons the Board currently does not conduct business online. Relative to the filing of applications the Board must receive various original documents from third parties, e.g. transcripts from optometry schools, national testing results, articles of incorporation, etc. As for testing online, there are a number of security concerns that must be addressed in order to assure that only those who possess the requisite skills and competencies for safe practice are licensed. However, the Board continues to look for opportunities to improve its efficiency and effectiveness through the use of the internet. It is our understanding that Nursing Board is currently involved in a pilot project to explore the possibility of online license renewal. If successful, the Board will consider moving in this direction as well.

Improving Online Services

The Internet could be further utilize to improve Board service to consumers by including information on consumer interest subjects such as purchasing contact lenses and spectacles, and what constitutes a comprehensive eye exam. Licensees would be better informed if the Board's website included trends or patterns of consumer complaints. Knowing what consumer issues are being presented to the Board for investigation could cause changes in the operation delivery of care in their practices that would result in better serving their patients.

Regulation of Online Practices

Presently the Board is not aware of the provision of online/practice without presence optometric services in California and, therefore, has not formulated any plans for Internet regulatory activities. However, given the ongoing advancements in technology used by members of the healing arts the Board continues to monitor this issue.

PART 2.

Board of Optometry

BOARD'S RESPONSE TO ISSUES IDENTIFIED AND FORMER RECOMMENDATIONS MADE BY THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

ISSUE #1. Should the State's licensing of optometrists be continued?

Recommendation: *Both the Department and Committee staff recommended the continued licensure of optometrists.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The Board of Optometry licenses and regulates approximately 7,500 Doctors of Optometry (OD) and about 400 optometric corporations, comprising the largest contingent of OD's of all states in the U.S. Optometrists are licensed in all 50 states and the District of Columbia.

An incompetent or unethical optometrist can cause serious and permanent harm, both physically and financially, to the unsuspecting public. Many procedures performed by optometrists involve direct contact with the eye. Partial or permanent vision loss due to an optometrist's negligent acts or incompetent practice has severe and dramatic consequences, including serious and irreparable diminution of the patient's quality of life.

In addition to serious physical harm, without regulation, the unethical optometrist's fraudulent practices put the public at risk for suffering extreme financial injury. According to statistics provided by the Board, the great majority of its investigations and disciplinary actions involve fraud or related allegations. Fraudulent or misleading claims by unscrupulous practitioners can cause unreasonable expectations on the part of consumers. It is only after a substantial amount of money has been paid in professional services or products that the patient is advised, or realizes, that the outcome will not be as promised or expected. Individuals least equipped to protect their own interests, like the elderly and disabled, are often the victims of these practices.

Board Response: The Board agreed with the committee recommendation.

ISSUE #2. Should an independent Board of Optometry be continued, or should its operations and functions be assumed by the Department of Consumer Affairs?

Recommendation: *Both the Department and Committee staff recommended that the Board of Optometry be retained as the independent state agency to regulate and license optometrists. Committee staff recommended that the sunset date of the Board be extended for four years (to July 1, 2003).*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: The Board of Optometry generally functions efficiently and effectively to ensure licensees' competence and pursue egregious disciplinary cases. However, see additional discussion (below) of the need for the Board of Optometry to enhance its program efforts in the areas of consumer information, outreach, and enforcement.

Board Response: The Board agreed with the committee recommendation.

ISSUE #3. Should the composition of the Board of Optometry be changed?

Recommendation: *This Board has nine (9) members, of whom six (6) are licensed optometrists and three (3) are public members. The Department generally recommends a public member majority and an odd number of members for regulatory Boards. For the Board of Optometry, the Department recommended an increase in public membership to improve balance consistent with those guidelines. Committee staff concurred with the Department, and recommended adding one more public member to the Board and removing one of the optometrist members. The composition of the Board would still be 9 members, but with five (5) optometrists and four (4) public members.*

Vote: *The Joint Committee did not adopt the recommendation of the Department and Committee staff by a vote of 2-3.*

Comment: The Department and Committee staff believe the current composition of the nine-member Board of Optometry, 6 optometrists and 3 public members, is *overbalanced toward optometrist members*. The Joint Committee may wish to consider converting one of the optometrist positions to a public member.

This recommendation is based on the belief that a regulatory Board dominated by professional members (a 2-to-1 majority in this instance), may tend to place greater emphasis on issues of competence (e.g., examinations, continuing education, expanded scope of practice) and correspondingly less emphasis and resources on consumer education/information, and enforcement. And, while it generally functions efficiently, the Board of Optometry may be a case in point.

In recent years, the Board has revamped and improved its licensing examination, instituted new continuing education requirements, and implemented the TPA law, which expanded optometrists' scope of professional activities. All of these achievements enhance the professional stature, competence and level of service that OD's provide to patients, and all are

noteworthy accomplishments. However, there may not have been equally noteworthy initiatives in the areas of consumer information or enforcement.

In the area of *consumer information*, the Board's consumer survey (conducted as part of the sunset review process) indicated "an overall dissatisfaction with the Board's visibility to the general public," despite the fact that the same survey indicated that 72% of respondents were satisfied with the Board's overall service/effectiveness. It appears that the Board needs to be more assertive in making its existence known and presence felt among *consumers of optometrists' services*.

In the area of *enforcement*, the Board's emphasis on competency issues seems to overlook the fact that the majority of its complaints and investigations, and most of its disciplinary actions, are only marginally related to competence. Board statistics for 1996/97 illustrate:

Investigations opened: Fraud, 6; Non-jurisdictional/ unlicensed (including advertising), 5; Personal Misconduct, 5; Health and Safety, 0; Unprofessional Conduct, 0; Incompetence/Negligence, 2.

Disciplinary actions: Of 12 completed in 1996/97, Health and Safety accounted for 0; Incompetence/Negligence, only 2.

There is no doubt that the practice of optometry involves serious health and economic issues for consumers, and the Board has achieved disciplinary sanctions in a few egregious cases. However, this analysis suggests that enforcement cases are rarely related to issues of licensee competence, and a *profession-dominated Board may tend to overemphasize competence at the expense of consumer outreach and enforcement*. Accordingly, the Legislature may wish to consider altering the Board composition to provide better balance among the Board of Optometry programs.

It should also be noted that this movement *away from dominant super-majorities* of professional members and *toward closer parity between public and professional members* is consistent with both the Joint Committee and Department of Consumer Affairs recommendations regarding other Boards that have undergone sunset review.

Board Response: The Board did not agree with the staff recommendation.

Comment: The Board provided the following reason: The present composition of the Board provides a well-balanced approach to consumer protection. The Board's record demonstrates a dedication to act in the public's interest by all of its members, both public and professional. With a composition of six professional, and three public members, California citizens are assured consumer protection is carried out with a sufficient base of technical and scientific knowledge upon which sound decisions for safe practice can be made.

Although the Board did not agree with the staff recommendation to change the composition of the Board, it did look at the areas cited in the comments, i.e. enforcement and consumer outreach. As reflected by the statistics in this report the Board has placed a greater in the area of enforcement where overall spending is up 15% from an average of 41% in 1997, to 56% in 2001. Additionally, the Board has used the internet to provide consumers with information upon which to make more informed decisions about eye care services, i.e. license look-up, frequently asked questions and links to consumer eye care guides.

3.

BACKGROUND PAPER FOR HEARING

IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD, AND BACKGROUND CONCERNING ISSUES

PRIOR SUNSET REVIEW: The Board of Optometry (Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) four years ago (1997-98). The JLSRC and the Department of Consumer Affairs (DCA) identified three issues and made recommendations regarding them. The first was: Should the state's licensing of optometrists be continued? Both the JLSRC staff and the DCA recommended continuation and the JLSRC voted 6-0 to adopt that recommendation. The second was: Should an independent Board of Optometry be continued to administer the optometry licensing laws or should it be sunset and its operations and functions be assumed by the DCA? Both the JLSRC staff and the DCA recommended continuation of the Board, and the JLSRC voted 6-0 to adopt that recommendation. The third was more controversial and was: Should the composition of the Board of Optometry be changed? The Board had (and has) 9 members – 6 licensed optometrists and 3 public members. Both the JLSRC staff and the DCA recommended increasing the representation of the public members on the Board. The JLSRC staff specifically recommended removing one licensee optometrist member and adding one public member, which would still maintain the Board at 9 members, but with a composition of 5 optometrists, and 4 public members. However, the JLSRC did not adopt the recommendation of its staff or the DCA by a vote of 2 in favor and 3 against.

GENERAL BACKGROUND AND DESCRIPTION OF THE BOARD

The Board of Optometry was created by the California Legislature in 1913. The Board currently licenses approximately 7700 optometrists and 400 optometric corporations. The Board is composed of 9 members – 6 licensed optometrists and 3 public members. Currently, the Board has three licensed optometrist member vacancies (Governor appointments). The Board has 8 standing committees whose members are appointed by the Board's President. For 2001 they are: Administrative (Dr. Easton – licensee), Regulations (Dr. Grant – licensee), Legislation (Mrs. Vogel – public), Examination and Licensing (Dr. Grant – licensee), Credentials (Mrs. Vogel – public), Continuing Education (Dr. Easton - licensee), Enforcement (Dr. Titus – licensee), and Public Relations (Mrs. Gee). The Board employs one Executive Officer and 6 additional staff persons.

The Board has an annual budget of approximately \$1.1 million, a fund reserve of 11.6 months as of July 1, 2001 which is projected to drop to 5.9 months by July 1, 2004. The Board's licenses are issued for two years, and to become a licensed optometrist an applicant must be a high school

graduate, obtain an optometric doctorate degree (O.D.), pass Parts I, II, and the Clinical Skills portion of Part III of the National Board of Examiners in Optometry's national exam, and pass the California Patient Management and Laws and Regulations examinations. The Board offers its licensing examination two times a year – January and June – with the January exam consisting mainly of applicants who have failed the previous June exam. To renew a license, an optometrist must pass 40 hours of continuing education (CE) every two years or 50 hours if the optometrist is certified to use therapeutic pharmaceutical agents (TPAs). TPA-certified optometrists must fulfill 35 of their required 50 hours on the diagnosis, treatment and management of ocular disease as follows: 12 hours on glaucoma, 10 hours on ocular infections, 5 hours on inflammation and topical steroids, 6 hours on systemic medications, and 2 hours on the use of pain medications.

Currently, there is no reciprocity with other states. However, the Board recently adopted a regulation – now pending approval – which would accept all parts of the NBEO exam in lieu of the Board-administered exam, as is currently done by 37 other states. Since most new optometry school graduates currently take all three parts of the NBEO exam, applicants who have passed that exam could become licensed in California and the other 37 states by passing only a state-specific jurisprudence exam (e.g., for California – its Laws and Regulations exam).

Over the past four years the number of complaints received by the Board has decreased somewhat, but it has increased the number of its investigations, increased the average number of cases it refers to the Attorney General's Office (AG) and has slightly increased the average number of disciplinary actions (accusations) it takes each year (average of 3 cases per year.) While the overall average cost per disciplinary case is higher than it was four years ago, it has decreased in the past three years. However the overall average cost of disciplinary investigations and experts has almost doubled, while the average cost per case referred to the AG has decreased. The average time frame from opening to completion of an investigation has increased, while there has been a decrease in the number of days it takes to close cases that have been referred to the AG. The Board first promulgated regulations to issue administrative citations and fines in 1999 – with the fines ranging from \$50 to \$2500 per violation. The Board does not have a diversion program. Pursuant to the Board's disclosure policy the Board discloses all disciplinary cases following the filing of an accusation by the AG.

Significant legislative change. Since the Board's last sunset review the scope of practice of licensed optometrists was significantly expanded by the enactment of SB 929 (Polanco, Chapter 676 – Statutes of 2000) which became effective this past January. That bill specified additional diseases and conditions optometrists may treat (in particular, certain types of glaucoma) with specified medications. The bill provided requirements for mandatory consultation and referral by an optometrist to an ophthalmologist in specified circumstances, and authorized the Board to certify a TPA certified optometrist to perform lacrimal irrigation and dilation of patients over age 12, provided the optometrist has completed at least 10 of the former procedures under the supervision of an ophthalmologist. The bill authorized the Board to certify a TPA optometrist to treat primary open angle glaucoma in patients over the age of 18, provided the optometrist has completed specified educational requirements and has provided treatment for at least two years to at least 50 glaucoma patients in a collaborative relationship with an ophthalmologist, as

specified. Further, the bill also specified additional duties that an unlicensed assistant may perform under the direction responsibility and supervision of an ophthalmologist or optometrist.

CURRENT SUNSET REVIEW ISSUES

BOARD POWERS, DUTIES and COMPOSITION ISSUES

ISSUE #1: The Board has been unable to hold one regular business meeting in the past year, and problems and concerns regarding the management of the have been raised by the Board's three public members.

Question #1 for the Board: *Why has the Board had problems this past year in obtaining the necessary quorum to fulfill its statutory responsibility to conduct business and administer the optometry licensing laws? What business items or responsibilities has the Board been unable to perform as a result of its inability to hold regular business meetings (e.g., licensee reinstatements, examinations, promulgation of regulations, enforcement)? Is the Board capable, in the foreseeable future, of holding regularly scheduled meetings on a quarterly basis to conduct its normal business? If not, why? If not, what can be done so that the Board can properly function? How many committees does the Board have, who appoints their chair and members, how many members are on each committee, and how often did they meet during the past year? Can other Board members participate on committees to which they have not been appointed?*

What is the response to the concerns and problems raised by the Board's three public members in their Sunset Review Minority Report? Given the explicit dissatisfaction of the Board's three public members with the operation of the Board – what actions has the Board taken or recommended be taken to address the concerns raised by the public members? Has the Board, its members or its executive officer contacted the Department of Consumer Affairs or the Governor's Office to request that the vacancies on the Board be filled by appointment? If so, when and what has been the response to date? What should be done if the Board continues to be unable to perform its statutory administrative responsibilities?

Background: The Board's last regular business meeting was held over a year ago, on December 11 & 12 in 2000. A schedule sent to all Board members in January listed the proposed schedule of dates for four regular Board meetings in 2001 (March, June, September, and November), as well as one special hearing on a proposed regulation to adopt Part III of the National Board of Examiners in Optometry (NBEO or national exam) in lieu of the Board-administered practical exam in optometry. However, during 2001, the only meetings at which the Board could obtain the necessary attendance of sufficient members to meet its 6-member quorum requirement was its February 15 regulatory hearing on adoption of the national exam and one special meeting on August 29, brokered by the Department of Consumer Affairs, just to deal with submission of the Board's Sunset Review Report and to approve the Psychometric Audit of the national exam so

that it could be used for the Board's next licensing examination scheduled for January 2002. [Note: The terms of two licensee members of the Board expired in June of 2001, leaving the 9-member Board with a bare quorum of 6 members - 3 licensee & 3 public members.]

A meeting of Board members held in July was only a committee meeting since there was an absence of a quorum. The Board's November 16-17 meeting was rescheduled to November 30 – December 1 to accommodate conflicts in Board members' schedules. However, that meeting had to be cancelled last week following notification by the Board's three public members that they would not attend, citing an absence of an opportunity to have input to the meeting agenda or to have reviewed a preliminary agenda prior to it being sent out.

The Board's "official" Sunset Review Report was adopted by a majority board vote at its August 29 special meeting and submitted to the JLSRC on September 1. However, citing disagreement with the manner in which the August meeting was conducted, the Board's three public members submitted a Sunset Review Minority Report dated September 17, 2001, in which they expressed their concerns both with the August meeting and with problems they believe have occurred with the management and operation of the Board over the past several years. A summary of their concerns or problems with the Board were:

- Board members are not provided with accurate or sufficient information in a timely manner on which to make their decisions.
- No board meetings were conducted for approximately 10 months in 1999.
- Public members' repeated requests for a board newsletter received no response until the August 2001 board meeting, and public board members' work on newsletters was never published.
- The board has failed to promulgate regulations to implement the provisions of SB 929 (Polanco, Chapter 676 – Statutes of 2000) which significantly expanded the scope of practice of optometrists and optometric assistants.
- It took many board meetings and memos to overcome the objections of licensee board members and the Executive Officer to set up a toll-free telephone number for the board.
- The board's committees are run by the board's Executive Officer and staff, not the committee's board members, and public board members are not appointed to nor allowed to provide input to meaningful board committees.
- Board business (e.g., meeting minutes, agendas, expense reimbursement claims) is not conducted in a timely fashion.
- Board members are not provided with adequate information about nor included in the Board's enforcement responsibility or its Enforcement Committee, and there has been no closure regarding recommendations that have been made by the public members.
- Board decisions (e.g., re adoption of the national licensing exam) are not based on all the necessary information but rather based on the personal interests and opinions of particular licensee board members.
- Board decisions only reflect the interests of the Board's licensee member majority; board composition should be changed to eliminate the licensee member majority.
- Board meetings and hearings are not adequately publicized, are not held in convenient or publicly accessible locations, are scheduled for longer than is necessary, and the agendas inaccurately reflect the timing and length of agenda items.

While the Board's staff has continued to conduct the day-to-day business of the Board, the Board itself has been confronting an apparent stalemate between its licensee and public members in being able to meet and decide on policies, regulations, petitions for license reinstatements, or recommended decisions in disciplinary cases.

ISSUE #2: Should the composition or membership qualifications of the Board be changed?

Question #2 for the Board: *Should the ratio of licensee to public member be changed to increase the representation by public members? If the public member representation is increased, should it be done by replacing a licensee member or members (perhaps through attrition as a position becomes vacant) or by increasing the size of the Board? What are the Board's conflict of interests provisions for the selection and participation of its licensee and its public Board members? Are these adequate to insure that the Board operates in the public's interest rather than being influenced by their own personal interests? Should they be made more stringent to avoid either the appearance or reality of improper self-interest?*

Background: During the Board's prior Sunset Review in 1997-98, the Department of Consumer Affairs recommended increasing the public membership on the Board to improve its balance consistent with the Department's general recommendations that its regulatory boards should have an odd number of members and a public member majority. The staff of the JLSRC staff concurred with the Department and recommended adding one more public member and removing one of the optometrist members – retaining a 9-member Board with 5 public and 4 licensed optometrist members. However, neither the Board nor the JLSRC itself agreed with that staff recommendation and the JLSRC decided **not to adopt** that recommendation on a vote of 2-3.

In support of its recommendation in 1997/98, the JLSRC staff wrote:

“The Department and Committee staff believe the current composition of the nine-member Board of Optometry, 6 optometrists and 3 public members, is *overbalanced toward optometrist members*. The Joint Committee may wish to consider converting one of the optometrist positions to a public member.

This recommendation is based on the belief that a regulatory board dominated by professional members (a 2-to-1 majority in this instance), may tend to place greater emphasis on issues of competence (e.g., examinations, continuing education, expanded scope of practice) and correspondingly less emphasis and resources on consumer education/information, and enforcement. And, while it generally functions efficiently, the Board of Optometry may be a case in point.”

This year the Board's three public members have recommended that the composition of the Board be changed to reduce the number of licensed optometrist members, and to add either a licensed ophthalmologist or public members. The public members believe that the Board's

actions are controlled by the interests of its licensee member majority, rather than the public interest.

Further, the Board of Optometry is required to hold at least one meeting a year at which its licensing exam must be given. However, the Board generally schedules four meetings a year to be held in both Northern and Southern California. The nine-member Board (six licensee and three public members) has a statutory quorum requirement of six members, currently has three licensee-member vacancies (one since June 2000 & two more since June 2001), and has had difficulty in the past year obtaining a quorum to conduct its meetings.

Based upon the apparent stalemate between the Board's public and licensee members, the JLSRC may want to consider changing the composition of the Board and the qualifications for its members. Some state regulatory boards within the Department of Consumer Affairs have additional requirements or limitations on the qualifications of its members. These can include that licensees represent particular backgrounds within the profession or types of practice, that conflict of interest provisions be more far reaching, and in an exceptional case that licensees of another profession be included on a Board (e.g., Respiratory Care Board.) The purpose of these additional requirements is to assure that the Board has the benefit of a broad cross-section of professionals involved in a board's regulation, that professionals working in different circumstances are represented, and that members are free of even apparent personal sources of conflict of interest. For this board, such additional requirements might include assuring that its licensed optometrist members represent both licensees working in private practice as well as those working as employees in corporate settings.

Regarding the Board's *efforts to protect consumers* since its last sunset review, the Board has adopted a regulation to require that optometrists post a conspicuous notice in their offices that federal law requires that patients be given a copy of their spectacle (eyeglasses) prescription, but that the law does not require the optometrist to release a contact lens prescription. Board staff have recommended that the Board go further and adopt a state regulation to provide patients with the right to obtain their contact lens prescription upon request, unless there are significant medical reasons not to do so. The Board's attorney has advised that the Board has the necessary statutory authority to adopt such a regulation. This regulatory proposal is pending before the Board for action. Also, the Board has instituted a toll-free "800" public telephone number for the Board.

In the area of *enforcement*, the Board's statistics show that 46% of its complaints come from consumers and that "unprofessional conduct" is the most often alleged violation. "Unprofessional conduct" includes allegations of patient abandonment, breach of confidentiality, failure to release records, unethical practices, theft, or rendering of unauthorized professional services. The Board's report did not breakdown its enforcement statistics by type, but show that while the number of complaints have been declining over the past four years (from 308 to 240), the number referred for investigation have increased (from 44 to 66 in 2000/2001), the number of accusations filed has varied from 2 in 1997/98 to 12 in 1998/99 and back down to 3 in 2000/01, and the number of formal disciplinary actions taken have declined from 12 in 1997/98 to 7 in 2000/01.

BUDGETARY ISSUES

ISSUE #3: The August 2001 Department of Finance fiscal controls audit of the Board found several deficiencies in the Board's internal fiscal controls and made recommendations to correct them.

Question #3 for the Board: *What deficiencies did the audit reveal and what was the Board's response? Does the board foresee any problems with rectifying the deficiencies disclosed by the DOF audit and carrying out the recommendations with which it has concurred? Will the DOF respond to the Board's written response to the audit, for example, in its final audit report? Is the Board required to provide subsequent reports to the DOF regarding the implementation of the recommendations? Have there been any discussions between the Board and the Department of Consumer Affairs regarding whether a "program audit" will be conducted? Over the past few years, what information has been provided to board members regarding the Board's budget, expenditures and revenues? In what form has this information been provided and at what frequency?*

Background: All three public Board members have expressed concerns regarding the management of the Board and inability to obtain regular information regarding the Board's budget, expenditures, and revenue.

At the request of the Department of Consumer Affairs, the Department of Finance (DOF) pursuant, to an interagency agreement recently conducted an audit review of the Board's internal fiscal controls. The DOF's draft audit report made several findings and recommendations pertaining to the Board's need to take physical inventories of and tag board property, maintain subsidiary property ledgers, submit monthly bank statements on a timely basis, process purchase invoices in a timely manner, and maintain independent leave balance reports. In its response to the DOF, the Board agreed with the audit findings and committed to taking corrective actions steps to comply with the audit recommendations. The audit did not review programmatic controls over the Board's service quality and operational efficiency – including management's effectiveness to accomplish desired performance through effective strategic planning, program budgeting, supervision, and fiscal discipline.

ISSUE #4: The Board's reported fund reserve exceeds its statutory maximum. Is the Board satisfactorily responding to this situation?

Question #4 for the Board: *Has the Board reconciled its fund analysis figures with those of the department? Are the amounts reflected in the Board's report accurate and, if not, what are the actual figures? When will the Board's reserve meet the statutory six-month limit? Is there a need to decrease licensing fees or increase the Board's base budget for any items?*

Background: The Board reports that it had a fund reserve at the end of the 2000/2001 fiscal year equaling 11.6 months operating expenses and has a statutory limit of six months reserve.

The Board reported that the Department of Consumer Affairs' fund analysis reflected a reserve level of only 6.5 months at the end of the 2000/2001 fiscal year, and that the Board would. The Board indicated that it will do an additional analysis, given the expenditure and revenue patterns, to determine whether a decrease in renewal fees is warranted.

LICENSURE ISSUES

ISSUE #5: Has the Board satisfactorily responded to the recent legislative expansion in the scope of practice for both optometrists and unlicensed optometry assistants?

Question #5 for the Board: *What was the Board's involvement in developing the provisions of SB 929 (Polanco, Chapter 676 – Statutes of 2000) prior to its enactment? What actions has the board taken in order to implement SB 929? Is the board proposing to adopt regulations regarding the glaucoma certification provisions of the bill? If so, what is being proposed? If not, why, and is the board proposing any less formal action (e.g., newsletter article, notice to licensees, etc.) regarding the bill's implementation? How did SB 929 expand the duties that unlicensed optometric and unlicensed medical assistants are allowed to perform? What specific tasks are involved in those duties? Why does the board believe that its proposed regulation on this will assure that those duties are performed in a safe and competent manner? What are the chronology and the status of that regulation? What process did the board use to determine whether regulations are necessary to implement this statute? What is the board's response to arguments that further clarification or specificity by the board is required to properly implement this statute with respect to either its glaucoma or optometric assistant provisions?*

Background: The three public members in their Minority Report contend that the board has failed to propose adopting regulations that are necessary regarding the provisions of SB 929 (Polanco – Chapter 676 of 2000) that provided for the board's certification of optometrists to independently treat glaucoma following collaboration with ophthalmologists in the treatment of 50 glaucoma patients. Regulations regarding the expanded scope of practice of unlicensed optometric assistants have also been proposed but the Board has not taken any formal action to promulgate such regulations. (Note: The Board has not been able to hold a regular Board meeting to do so since December of 2000.)

One public board member has expressed that her request to be appointed to the regulation committee was not approved by the Board's President who makes the appointments to the Board's various committees. Only one licensee member was appointed to the Board's standing Regulations Committee for 2001. However, a special committee composed of that public member, the licensee member of the standing regulations committee and staffed by the Board's Executive Officer, was appointed by the Board's President on November 7, 2000 to discuss the implementation of SB 929 and develop recommendations for its implementation. That special committee's recommendations were presented at the Board's December 1, 2000. In response to those recommendations, the Board decided to have its staff develop of form for the glaucoma collaboration provision of the bill, have staff draft proposed language re performance of duties

by an unlicensed optometric assistant and bring it back to the Board for consideration, have staff research the issue of the definition of “consultation” as used in the bill, and took no action on two other items. Except for development of the form by staff, the Board has not been able to meet to pursue the other implementation actions it had decided it would pursue.

EXAMINATION ISSUES

ISSUE #6: The Board has voted to eliminate using its own licensing examination in favor of using the National Board of Examiners in Optometry (NBEO) examination.

Questions #6 for the Board: *What assessment or review did the Board do that led to its decision to accept passage of all portions of the National Board of Examiners in Optometry examination (NBEO or national exam) in lieu of requiring license applicants to pass a California developed and administered practical licensing exam? Prior to its vote to adopt the national exam, how did the Board establish that the NBEO exam properly tested California’s license applicants to assure their minimum competency to practice within their scope of practice in California? What was the chronology of events involved with the Board’s adoption of a proposed regulation to use the national exam? What prompted the recent audit of the national exam by the Board, what were the findings of that exam audit? What is the current status of that regulation? When is the Board’s next licensing exam and when is adoption of the national exam expected to occur? Will a change in the examination fee paid by license applicants be necessary as a result of adoption of the national exam?*

Background: The public board members, in their Minority Report, have expressed concerns that the Board’s decision to move to adopt the national exam was prompted by the licensee member of the Board who has been in charge of California’s exam but will be leaving the Board in the near future and is involved with the administration of the national exam. Following a formal regulatory hearing last February, the Board adopted a regulation – now pending approval – which would accept all parts of the NBEO exam in lieu of the Board-administered exam, as is currently done by 37 other states. Currently the Board requires passage of Parts I, II, and the Clinical Skills portion of Part III of the national exam plus passage of the Board’s own patient management and laws and regulations exams. In essence, the proposed exam would now add passage of the remainder of Part III of the national exam instead of the Board’s Patient Management exam – but still require license applicants to pass the California laws and regulations exam.

Following submittal of the Board’s proposed regulation to the DCA, the DCA pointed out that an audit should be performed on the national exam to determine if it met California’s standards for exam administration. That Board’s regulatory proposal was held back pending the completion of the audit. The Board contracted to have the audit performed and the audit report was submitted on November 19. The audit concluded, with reservations, that the national exams are valid measures of optometric competencies, but made recommendations that were believed would enhance the validity of the examinations. The Board’s sunset report states that the Board will

consider moving in the direction of online license renewal if a pilot project in which the Board of Registered Nursing is involved proves successful.

CONTINUING COMPETENCY ISSUES

ISSUE #7: Should the criteria and process for approving mandatory continuing education courses and providers be changed. In particular, should all courses and course providers that are approved by the Medical Board of California for mandatory continuing medical education also qualify for mandatory continuing education for licensed optometrists?

Question #7 for the Board: *What criteria does the Board use for its approval of education courses and providers for mandatory continuing education? Why are continuing education courses officially sponsored or accredited by any accredited school or college of optometry given blanket pre-approval? What assurances are there that such courses will in fact meet the criteria for continuing education courses approved by the Board (but not made applicable in regulation to courses by schools/colleges of optometry?) Will coursework on subject areas that are studied as part of the curriculum of an approved school of optometry (e.g., general human diseases or conditions not specifically involving the eyes or related structures) also qualify for approval as continuing optometric education?*

Background: The optometry licensing laws require the Board to adopt regulations that require, as a condition of renewal, that all licensees submit proof satisfactory to the Board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the Board or by other means deemed equivalent by the Board. Concerns have been raised that the quality of CE courses has declined since completion of CE became mandatory – essentially insuring a “captive audience” of persons who must take approved CE. And it has been proposed by at least one licensee that all mandatory CE that has been approved by the Medical Board of California for physicians should also be accepted as qualifying for the mandatory CE requirements in optometry – the contention being that medically-related coursework is relevant to the practice of optometry and constitutes a required part of the approved educational coursework for obtaining an initial license.

To renew a license, an optometrist must pass 40 hours of continuing optometric education (CE) every two years or 50 hours if the optometrist is certified to use therapeutic pharmaceutical agents (TPAs). TPA-certified optometrists must fulfill 35 of their required 50 hours on the diagnosis, treatment and management of ocular disease as follows: 12 hours on glaucoma, 10 hours on ocular infections, 5 hours on inflammation and topical steroids, 6 hours on systemic medications, and 2 hours on the use of pain medications. Apart from the above mandatory CE requirements, the Board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation.

In addition, Board regulations require each licensee to complete 20 hours of formal CE course work approved by the Board within the year immediately preceding the renewal deadline. No more than 4 hours of course work can be in the area of patient care management, and courses in business management shall not be approved. The regulations limit use of specified alternative methods for meeting the CE requirements to one half of the 20 hours of required course work. The regulations require that all licensees maintain current certification in cardiopulmonary resuscitation (CPR) from approved providers

CE programs that have been approved by regulation as meeting the Board's required standards include: (1) CE sponsored or accredited by any accredited school or college of optometry, (2) CE offered by any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program, or (3) CE approved by the International Association of Boards of Examiners in Optometry known as COPE (Council on Optometric Practitioner Education). Further, CE meeting the criteria specified below may be approved by the Board after submission of a program, schedule, topical outline of subject matter, and curriculum vitae of all instructors to the Board's Executive Officer at least 45 days prior to the date of the program. The criteria for Board approval are: (1) Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry, (2) Whether the speakers, lecturers and others participating in presentation are recognized by the Board as being qualified in their field, (3) Whether the proposed course is open to all licensees, and (4) Whether the CE provider agrees to maintain and furnish records of course content and attendance as the Board requires for a period of at least three years from the date of the course.

ENFORCEMENT ISSUES

ISSUE #8: The Board reports an increase in its enforcement activity and related expenditures since its last sunset report in 1997, but also reports an increase in the amount of time it takes to complete a disciplinary case. Further, the Board has had to seek deficiency funding for enforcement purposes over the past two fiscal years.

Question #8 for the Board: *What accounts for the increase in both enforcement activity and delays in completion of the pre-accusation and post-accusation time frames? Does the pre-accusation time frame include time that the case is still at the Board as well as after it has been referred from the Board to the AG but before an accusation is filed? If so, does the Board have data that breaks out the time cases are at each stage? What does the Board believe can be done to reduce these increases in the time it takes to complete its disciplinary cases? In what years since its last sunset review have the Board's expenditures for enforcement exceeded its budgeted appropriation? If so, in which areas of enforcement did this occur? In what years did the Board submit a deficiency request for additional expenditure authority (appropriation) and what was the cause of the deficiency (ies)? Does the Board anticipate the need for a deficiency request this year? Has the Board's budget for enforcement been increased? Does the Board need an increase in its base budget, particularly for enforcement? If so, what would those additional monies be used for?*

Background: The three public board members in their Minority Report expressed concerns that they are not satisfactorily informed, or are misinformed, regarding the Board's enforcement program and related budget – which led to their decision to drop further investigation in one particular disciplinary case.

The Board's report shows a decline in complaints made to the Board, an increase in the number of investigations initiated, an increase in the average number of cases referred to the Attorney General's Office (AG) for initiation of formal disciplinary action, and a slight increase in the average number of disciplinary actions taken. The Board reports that it has increased its expenditures for enforcement by 15%, from an average of 41% in 1997 to 56% in 2001. However, during that same period the average amount of time it takes to process complaints, investigate and process complaints has increased from 805 days (1997/98) to 914 days (2000/01), or an increase of 109 days. The bulk of that increase appears to occur after the investigation is completed and either prior to the filing of an accusation by the AG or following the filing of the accusation but before the conclusion of the case ("post-accusation").

The Board has experienced increased disciplinary workload that resulted in the Board filing Deficiency Requests to obtain deficiency funding (additional funds appropriated beyond amount initially budgeted) over the past two fiscal years (1998/99 & 1999/2000.) In particular, as has been the case with some of the other licensing boards in the Department of Consumer Affairs, the deficiency resulted in part due to unanticipated Attorney General enforcement costs that had led to expenditure of all the funds that had been budgeted and appropriated for that purpose in those two fiscal years.

CONSUMER EDUCATION/INFORMATION AND SATISFACTION

ISSUE #9: There is still relatively high dissatisfaction with the Board by those who file complaints, but the Board has made significant improvements in making its existence known to and communicating with complainants.

Question #9 for the Board: *Please explain what efforts the Board has made to improve communication with complainants, why it believes that dissatisfaction with the outcome of the consumers' complaints is still relatively high, and what other improvements the Board intends to make to provide better overall service to complainants.*

Background: The satisfaction survey of complainants conducted by the Board for its prior 1997/98 sunset review indicated that 26% of respondents were satisfied that the Board's existence was well known, 79% were satisfied with knowing where to file a complaint, 55% were satisfied with the outcome of their complaint case, and 72% were satisfied with the Board's overall service or effectiveness. The complainant survey conducted by the Board as a part of this year's sunset review process shows that for 1999 & 2000, 100% of respondents were satisfied

with knowing where to file a complaint and whom to contact, 60% (1999) & 75% (2000) were satisfied with the final outcome of their complaint, and 80% (1999) and 66% (2000) were satisfied with the overall service provided by the Board.

ISSUE #10: Should the Board be doing more to publicize its existence and regulatory role, and should it be doing more to educate and inform the public regarding the services provided by optometrists?

Question #10 for the Board: *How does the Board publicize its existence, its regulatory role over optometrists, and its public board meetings. What process is used to select board meeting locations and sites? Could the Board select locations or sites that are more accessible to the public, particularly the disabled? What is the status of the Board's newsletter? What information does the Board provide the public and how does it provide that information? What are the most frequent sources of consumer complaints to the Board? Does the Board plan to provide information, in pamphlet form and on its website, regarding subjects such as what constitutes a thorough eye examination and what they should know in buying spectacle or contact lenses?*

Background: The three public members in their Minority Report contend that the Board has failed to adequately publicize the Board's meetings, make those meetings easily accessible, or provided newsletters to its licensees and others on the Board's mailing lists. The Board maintains a website on the Internet that provides information about the Board, the requirements of the optometry licensing laws, licensees, and optometry. The Board's sunset report states that the Board will consider moving in the direction of online license renewal if a pilot project in which the Board of Registered Nursing is involved proves successful. The Board does note that the Internet could be further utilized to improve Board service to consumers by including information on consumer interest subjects such as purchasing contact lenses and spectacles (eyeglasses), and what constitutes a comprehensive eye examination. The Board has produced a consumer information pamphlet in the past but it has not been updated in recent years to include changes in the law or additional relevant information.

4.

FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION?) Should the licensing and regulation of optometrists be continued?

Recommendation #1: *The Joint Committee and the Department recommend that profession of optometry continue to be regulated.*

Comments: Due to the highly technical procedures performed by optometrists and the health and safety implications for consumers, the Department and the JLSRC recommend continued regulation of the optometric profession.

ISSUE #2. (CHANGE BOARD COMPOSITION?) Should the composition or membership qualifications of the Board be changed?

Recommendation #2: *The Joint Committee and the Department recommend two additional public members added to the Board.*

Comments: The Board currently consists of nine members, six professional members and three public members. The majority of the boards under the purview of the Department have a balanced composition with an equitable number of professional and public members. Unlike these other boards, the Board of Optometry has a two-to-one ratio of professional to public members. It has been argued that this professional super majority necessarily results in professional bias, and less focus on consumer protection.

Public participation on regulatory boards ensures a balanced approach to decision-making, and enhances public protection. In recent years, the JLSRC has expanded the number of public members on DCA regulatory boards. Public members have been added to the Accountancy, Contractors, Pharmacy, Podiatry, Psychology, Respiratory Care, and Veterinary Medical Boards through sunset review legislation.³⁰

³⁰ SB 133 (Chapter 718, Statutes of 2001), SB 2029 (Chapter 1005, Statutes of 2000), SB 827 (Chapter 759, Statutes of 1997), SB 1981 (Chapter 736, Statutes of 1998), SB 1983 (Chapter 589, Statutes of 1998), SB 827 (Chapter 759, Statutes of 1997), respectively.

If the Board is sustained, the Department and the JLSRC recommend adding two additional public members, appointed by the Governor, for a total of eleven members (six professional, five public). This new composition would provide more consumer representation while continuing to maintain the expertise needed for technical regulatory and enforcement issues. Two additional Board members would not substantially increase a Board's operational costs.³¹

ISSUE #3: (RESOLVE CONFLICTS BETWEEN PROFESSIONAL AND PUBLIC MEMBERS?) What actions should the Board take to resolve some of the ongoing problems between professional members and public members?

Recommendation #3: *The Joint Committee and the Department recommend that the Board needs to continue its efforts to reconcile conflicts between professional and public members.*

Comments: As reported to the Department and the JLSRC and detailed in the “Minority Report”, the Board’s public members argue that they are treated differently than the professional members, suggesting the potential for a two-tiered approach by the Board staff in addressing the concerns of the public members.

As evidenced by the sunset review “minority report” submitted to the JLSRC by the Board’s public members (who constitute one-half of the Board), significant conflict exists between the professional and public members of the Board of Optometry. Further evidence of this conflict is the Board’s inability to meet due to the unwillingness of the public members to attend meetings under current conditions. Although the Board has been making disciplinary decisions via mail ballot, the inability of Board leadership to address and resolve the issues precipitating the impasse is a matter of concern. The absence of Board meetings undermines the purpose of the Board—which in part is to engage in regular public discourse.

This impasse and consistent inability to resolve differences is unprecedented. The Department has been asked on more than one occasion to facilitate conversations between the Board’s two factions so that a Board meeting may be convened. The Department believes that this is the responsibility of Board leadership – its presiding chair and executive officer. Nonetheless, the Department has provided guidance and recommendations on how to overcome the intransigency of the Board members.

It was recommended that professional facilitators or conflict mediation experts be brought in to resolve the conflict so that the Board can carry out its business. While the Department was encouraged by the Board’s recent decision to do so, it is disappointed by the plan engaged to effectuate conflict mediation. The Department’s profound concerns about Board leadership remain.

³¹ Average annual travel and per diem costs per member are approximately \$2,500.

ISSUE #4: (COMPLY WITH RECENT AUDIT?) What corrective steps should the Board take to comply with deficiencies found during a recent audit conducted by the Department of Finance?

Recommendation #4: *The Joint Committee and the Department recommend the Board should comply with corrective steps recommended in the Board's recent audit.*

Comments: The Department and JLSRC recommend that the Board continue to take the corrective steps needed to comply with the Board's recent audit, conducted by the Department of Finance (DOF). At the request of the Department, the DOF, through an interagency agreement, conducted an audit review of the Board's internal fiscal controls. The DOF's draft audit identified several areas needing improvement. These included the need to submit monthly bank statements on a timely basis and process purchase invoices in a timely manner, among others. The Board agreed with the audit findings and recommendations for remedial behavior in its response to the DOF. The Department would like to underscore the importance of these corrective steps and the need to have sound internal fiscal controls in place prior to the next sunset review cycle.

ISSUE #5: (DEVELOP STANDARDS FOR UNLICENSED ASSISTANTS?) Should the Board adopt supervision and training standards for unlicensed optometric assistants?

Recommendation #5: *The Joint Committee and the Department recommend that the Board should conduct an occupational analysis for optometric assistants to identify the tasks they will perform, and the attendant training and skill level required. An occupational analysis should be developed before unlicensed assistants are permitted to engage in practices that until now required licensure as an optometrist. Following the occupational analysis, regulations clarifying the level of training and supervision of assistants should be promulgated.*

Comments: Senate Bill 929 (Chapter 676, Statutes of 2000) expanded the scope of practice for optometrists and expanded the duties that an unlicensed assistant may perform under the direct responsibility and supervision of an optometrist. This is a dramatic change in the delivery of optometric services. The provisions of SB 929 reclassified technicians, who previously were only authorized to fit contact lenses, to assistants who can perform various testing procedures including glaucoma testing, visual perception testing, measurement of the thickness of the cornea, screening of the corneal curvature, administering topical agents, and performing sonograms to measure the length of the eye and structures of the eye, generally used for surgical procedures and may involve direct contact with the eye. Clearly, this is a significant expansion of the tasks that unlicensed assistants were able to perform prior to the passage of SB 929, and consumers should not be placed at risk until duties of these assistants are clarified and regulations are adopted clarifying the level of training and supervision. Specifically, the Board needs to establish standards to ensure that unlicensed assistants demonstrate adequate knowledge and skill. In the absence of clarifying regulations, individual practitioners in the field could interpret the law in a variety of ways. To protect consumers, the Board should expedite the adoption of clarifying regulations.

ISSUE #6: (CONTINUE WITH THE CURRENT BOARD?) Should the profession of optometry continue to be regulated by the current Board, or should the Board be reconstituted, or become a bureau under the Department of Consumer Affairs?

Recommendation #6: The Joint Committee recommends that current membership of the Board should be allowed to sunset.

Comments: Since the last sunset review this Board has struggled with scope of practice issues, criticism of its enforcement efforts, an impasse between Board members that has effectively rendered the Board impotent, and a persistent perception that the profession exercises inordinate control of the Board. The Department's Deputy Director for Board Relations was called in to mediate Board Member conflict and facilitated the Board's September meeting. In 1999 the Director intervened in a Board dispute with the Department of Justice which has severely impaired the Board's relationship with the Department of Justice's licensing division. The Department is troubled by the lack of leadership exhibited at the Board and has shared those concerns with Board Members and the Executive Officer.

Following criticism that the Board was unlawfully permitting optometric exams to be conducted by unlicensed assistant personnel, the Board originally responded that this was common practice, and there was no intention to discipline optometrists delegating this function. When the Department suggested legislation to review this practice, the Board indicated previous legislative efforts had not been successful, and legislation would not be pursued to clarify the permission of this practice. Nonetheless, and fully aware of the Department's interest in resolving the matter, the optometry scope of practice bill, Senate Bill 929 (Chapter 676, Statutes of 2000), was amended late in the session to permit unlicensed assistant personnel to perform optometric exams. While this may well be an appropriate contemporization of the practice act, it was achieved with virtually no public discussion, and without even cursory notification to the Department.

In 2001, the Department worked with the Board and the Office of Examination Resources (OER) to evaluate the national exam and its appropriateness for use in California. However, the Board did not conduct an independent audit of the national exam, in spite of the significant changes in their scope of practice that occurred as a result of SB 929, until the Department intervened.